IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1526 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

HEMANTBHAI MAHESHBHAI MATAI - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MS. KRUTI M SHAH for Applicant,
MR KT DAVE ADDL.PUBLIC PROSECUTOR for Respondent No.1,
NMR KM PARIKH for Respondent Nos.2 and 3.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/09/2007

ORAL JUDGMENT

1. Rule. Mr.K.M. Parikh learned advocate waive the service on behalf of the respondent No.1 and Mr.K.T. Dave, learned Addl.Public Prosecutor waives the service of

notice on behalf of the respondent Nos.2 and 3.

2. At the request of the parties, the matter is taken up for final hearing.

3. By way of this petition under Article 227 of the Constitution of India, the petitioner – husband has prayed for appropriate, writ, order and/or direction quashing and setting aside the judgement and order dtd.6/7/2007 passed by the learned Presiding Officer, 3rd Fast Track Court, Surat in Criminal Revision Application No.79 of 2007, enhancing the amount of maintenance from Rs.800=00 to Rs.2000=00 per month so far as respondent No.3 is concerned.

4. The respondent Nos.2 and 3 herein preferred Maintenance Application No.46 of 2002 in the Court of learned Chief Judicial Magistrate, Surat for getting maintenance under sec.125 of the Code of Criminal Procedure and the learned 3rd Joint Civil Judge and Judicial Magistrate, Surat by judgement and order dtd.31/1/2007 partly allowed the said application directing the petitioner – husband to pay maintenance to the respondent Nos.2 and 3 at the rate of Rs.1500=00 and Rs.800=00 per month respectively.

5. Being aggrieved and dissatisfied with the order passed

by the learned Judicial Magistrate (FC), Surat dtd.31/1/2007 passed in Maintenance Application No.46 of 2002, the petitioner – husband preferred Criminal Revision Application No.79 of 2007 before the learned Additional Sessions Judge, Surat, which came to be heard by the learned Presiding Officer and 3rd Fast Track Court, Surat, who by his judgement and order dtd.6/7/2007 partly allowed the said revision application by quashing and setting aside the order passed by the learned Judicial Magistrate (FC), Surat dtd.31/1/2007 passed in the Maintenance Application No.46 of 2002 in so far as the amount of maintenance awarded to the wife / respondent No.2, however, enhanced the amount of maintenance so far as the minor daughter / respondent No.3 – Foram Aliyas Bhavini, daughter of Hemantbhai Matai, enhancing amount of maintenance from Rs.800=00 to Rs.2000=00. Being aggrieved that part of the judgement and order passed by the learned Presiding Officer, 3rd Fast Track Court, Surat by which the amount of maintenance awarded to the respondent No.3 is enhanced from Rs.800=00 to Rs.2000=00 per month, the petitioner has preferred present petition under Article 227 of the Constitution of India.

6. Ms.Shah, learned counsel appearing on behalf of the petitioner has vehemently submitted that the impugned order passed by the revisional court enhancing the amount of maintenance from Rs.800=00 to Rs.2000=00 per month so far as the respondent No.3 is concerned, the same is absolutely illegal and the same has been passed without giving any opportunity to the petitioner. It is submitted that in the revision application filed by the petitioner, the learned revisional court ought not to have enhanced the amount of maintenance and that too without giving an opportunity to the petitioner. Under the circumstances, it is requested to quash and set aside the impugned order enhancing amount of maintenance so far as respondent NO.3 is concerned and remand the matter to the revisional court.

7. Mr.K.T. Dave, learned Addl.Public Prosecutor appearing on behalf of the State has requested to pass appropriate order.

8. Mr.K.M. Parikh, learned advocate appearing on behalf of the respondent Nos.2 and 3 has tried to support the impugned the impugned judgment and order by submitting that as the order of the learned Judicial Magistrate awarding maintenance to the respondent

No.2 – wife has been quashed and set aside, to strike the balance, the revisional court has enhanced the amount of maintenance so far as minor daughter – respondent No.3 is concerned. He has also further submitted that as such the learned Revisional Court has power to modify the order even in the revision application filed by the petitioner. Under the circumstances, it is requested to dismiss the present application.

9. At the outset, it is required to be noted that Criminal Revision Application No.79 of 2007 was filed by the petitioner challenging the judgment and order passed by the learned Judicial Magistrate (FC), Surat awarding maintenance to the respondent Nos.2 and 3 and the learned Revisional Court found favour with the submission on behalf of the petitioner with regard to maintenance awarded to the respondent No.2 – wife and quashed and set aside the order passed by the learned Judicial Magistrate (FC) awarding maintenance to the respondent No.2 wife. However, by the judgement and order, the learned Revisional Court enhanced the amount of maintenance from Rs.800=00 to Rs.2000=00 per month to be paid to the respondent No.3 – minor daughter. However, it appears that the said order has

been passed by the revisional court without giving an opportunity to the petitioner and/or without calling upon the petitioner to show cause as to why the amount of maintenance so far as the minor daughter is concerned should not be enhanced. Under the circumstances, to that effect the judgment and order passed by the revisional Court is without giving opportunity to the petitioner and the same is against the principles of natural justice which requires to be quashed and set aside and the matter is to be remanded to the revisional court for consideration of the same in accordance with law and on merits. Under the circumstances, the impugned judgement and order dtd.6/7/2007 passed by the learned Presiding Officer, 3rd Fast Track Court, Surat in Criminal Revision Application No.79 of 2007 in so far as enhancing the amount of maintenance from Rs.800=00 to Rs.2000=00 per month to be paid to the respondent No.3 minor daughter, is hereby quashed and set aside and the matter is remanded to the revisional court for passing appropriate order afresh in accordance with law and on merits, after giving an opportunity to all the concerned.

10.The impugned order itself be treated as show cause

notice to the petitioner and the petitioner to show cause before the revisional court that as to why the amount of maintenance to be paid to the respondent No.3 - minor daughter should not be enhanced and after giving an opportunity to all the concerned, the learned Revisional Court to pass appropriate order afresh in accordance with law and on merits. Such exercise to be completed within a period of three months from the date of receipt of this Order.

11. In the meantime, it is agreed by the learned advocate appearing on behalf of the petitioner that the petitioner shall clear the arrears of maintenance to be paid to the respondent No.3 at the rate of Rs.800=00 per month within a period of one month from today and only on such deposit, the learned Revisional Court to proceed further in the revision application.

12. The petitioner is hereby directed to clear the arrears of maintenance as stated above within a period of one month from today.

13. It is to be observed that this Court has not expressed any opinion on the merits in favour of either parties and it is ultimately for the revisional court to pass appropriate order in accordance with law and on merits.

14.The petition is allowed accordingly. Rule is made absolute to the aforesaid extent. D.S. Permitted.

[M.R.SHAH, J.]

rafik